

## Brand Clearance

If you have a new business or are re-branding an existing business, or you simply want the peace of mind that you own the brand you have been using for a while, a brand clearance search is recommended as the first step.

To attempt to clear your brand for use, we will conduct searches of the trade marks register and other registers to see if there is any use of your brand or a similar brand by other businesses for the same or related products to those that you intend to sell under the brand.

From the results of such searches and applying the principles of trade mark law and practice, we can assess whether your use of your brand is in breach of any pre-existing trade mark rights owned by others and advise you accordingly as to whether using the brand will expose you to action for registered trade mark infringement under the *Trade Marks Act 1995* (Cth).

The other registers that we will look at to clear your brand for use include the business names register, company names register and domain name registers. We may also conduct searches of Google to see if there has been any use of the brand in relation to the same or related products to those on which you wish to use the brand. This may alert us to existing interests in the brand and allow us to report on them and the threat, if any, they may pose to your use of you brand, in particular to the possibility of any action under the law of passing off and the law relating to misleading and deceptive conduct under the *Competition and Consumer Act 2010* (Cth).

Based on the results of our brand clearance investigations we can provide our recommendations on the next step, which may be to apply to register your brand as a trade mark or, immediately cease use of your brand (to avoid exposure to legal action) and select a different brand.

As indicated above, the consequences of not having your brand cleared before use or application is that you may expose yourself to legal action by the owner of the same or similar brand. Costs will be incurred in resolving that matter – see “Disputes” on the Marshall Legal website - and financial compensation may be requested from the owner of the brand, if you have used the brand to the detriment of the owner of the brand.

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### IProtect

However, in the large majority of the cases, the real and hidden cost is that of ***de-branding your business*** and then ***re-branding your business***. The extent of this will depend on your business. It could be as simple as changing the name on your website and your domain name or, more likely, as extensive as re-doing signage, product packaging, vehicle decals and wraps, uniforms, business stationery, TV advertising, changing all directories (physical and digital), and most painful of all, notifying your customers of your change of name and the mistrust that it can engender.

**Contact us today for assistance with YOUR IP LICENCE**

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